

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act —)	
Competitive Bidding for Commercial)	
Broadcast and Instructional Television Fixed)	
Service Licenses)	
)	
Reexamination of the Policy)	GC Docket No. 92-52
Statement on Comparative)	
Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90- 264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	

To: The Commission

COMMENTS OF DANBETH COMMUNICATIONS, INC.

DanBeth Communications, Inc. ("DanBeth"), by its attorneys, hereby comments on the Notice of Proposed Rule Making in the above-referenced proceeding. As a pre-July 1, 1997 applicant for a new television station, DanBeth is particularly interested in the proposed auction procedures, especially the proposed bidding credits for "designated entities."

DanBeth's Interest in Proceeding

DanBeth is an applicant for a construction permit for a new broadcast television station on Channel 4 in Manteo, North Carolina. There are four other mutually

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exclusive applications. The applications were all filed before July 1, 1997, but have not been designated for hearing. DanBeth therefore anticipates that the Commission will use competitive bidding to resolve the mutual exclusivity and that only the five applicants will be permitted to participate in any auction. As a potential bidder, DanBeth offers the following comments on certain of the Commission's proposals.

Definition of Small Business

DanBeth supports the use of bidding credits for "small businesses."

DanBeth, however, urges the Commission to be careful not to adopt an overly inclusive definition of "small business." DanBeth believes that only applicants with annual gross revenues of less than \$3 million should qualify for a bidding credit, and that the credit should be 35 percent.

DanBeth recognizes, as the Commission has pointed out in the Initial Regulatory Flexibility Analysis, that the Small Business Administration characterizes a television station as a "small business" if (a) it is independently owned and operated, (b) it is not dominant in its field of operation, and (c) it has no more than \$10.5 million in annual receipts. DanBeth suggests, however, that the benchmark for defining a "small business" for purposes of broadcast auctions should be lower than the SBA's benchmark, because start-up broadcast stations require much less capital than other segments of the telecommunications industry. For example, DanBeth estimated in its application that it would cost \$1,374,170 to construct and operate the Channel 4, Manteo facility for three months. DanBeth's estimate appears to be on the high end: the cost estimates of the other four Channel 4, Manteo

applicants are \$250,000, \$384,138, \$585,000, and \$921,000. These estimates demonstrate that the capital requirements for new broadcast television stations are much lower than the capital requirements for start-up businesses in other telecommunications industries.

(DanBeth recognizes that it may cost much more to buy a broadcast station in the secondary market than to build a new station. The sales prices for operating stations, however, should not be a factor in determining the capital requirements for start-up stations.)

DanBeth also believes that the Commission should only grant a 35 percent credit and should not use the tiered credits set forth in Section 1.2110(e)(2) of the Rules. Under Section 1.2110, an applicant with gross revenues up to \$15 million would be entitled to a 25 percent credit, and an applicant with gross revenues up to \$40 million would be entitled to a 15 percent credit. As pointed out above, however, the \$15 million and \$40 million benchmarks are both higher than the SBA's standard for determining whether a television station is a "small business." Therefore, the Section 1.2110 benchmarks would result in over inclusively definition of "small business:" more applicants could qualify as small businesses than necessary or appropriate.

DanBeth also recommends that the Commission make clear how gross revenues are to be computed for the purpose of determining whether an applicant qualifies as a small business. *See, e.g.,* Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making* at ¶ 25 (released December 31, 1997) ("*Part 1 Order*"). Take for example, an applicant which acquires the assets of three new television stations in the year that it files its short-form application. The Commission should make clear that the

applicant's gross revenues include the revenues of the three television stations during the preceding three years, notwithstanding that the applicant acquired them just prior to the auction.

Credit for Diversification of Ownership

DanBeth also supports the Commission's proposal to give bidding credits to applicants with no other media interests. To determine whether an applicant qualifies for a "diversification credit," DanBeth suggests that the Commission use the multiple ownership attribution rules set forth at 47 C.F.R. § 73.3555. There are several advantages to using the existing (or amended) attribution rules, not the least of which is ease of administration. Information concerning attributable interests is readily available, and the Commission already has an extensive body of law interpreting the attribution rules in the event of any dispute.

DanBeth believes that the maximum diversification credit — at least 35 percent — should be awarded to an applicant with no other attributable media interests. By granting substantial credits to applicants with no other media interests, the Commission would further its policy of encouraging a diversity of 'voices,' a policy that has historically been of paramount importance in awarding authorizations for new broadcast stations. A credit of at least 35 percent is necessary to offset the economies of scale that an applicant with other media interests will otherwise enjoy, whether the other applicant owns media in or outside the relevant market. A group owner enjoys a substantial economic advantage over an applicant with no other media interests, regardless of whether the stations are in the

same market or not. Of course, an applicant with other media interests in the same market should not receive any diversification credit. The grant of a construction permit to an applicant with an attributable interest in an existing station in the same market would not promote a diversity of voices in the marketplace.

DanBeth also urges the Commission to grant separate bidding credits for small business status and for diversification, as the separate credits would promote different policies. The small business credit, essentially mandated by Section 309(j)(4) of the Communications Act, advances Congress's interest in encouraging small businesses. The diversification credit, on the other hand, promotes the separate objective of assuring a diversity of voices.

Definition of Affiliate

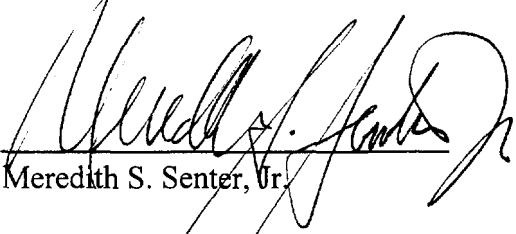
Although the Commission did not ask for comments on how to define "affiliates" for purposes of determining the revenues and media interests of an applicant, the Commission did ask for comment on attribution in connection with its discussion of credits for minorities. *See NPRM* at ¶ 88 & 89. DanBeth urges the Commission to avoid the difficulties and alleged abuses that have occurred as a result of the use of ambiguous definitions for these purposes in the wireless auctions. As an example, in paragraph 88 of the *NPRM*, the Commission mentions the "controlling principal" test proposed in the Part 1 rule making for all auctionable services. (In the *Part 1 Order*, the Commission has proposed a "controlling interest" standard.) The Commission has proposed this standard out of a desire to provide "flexibility that will enable legitimate small businesses to attract passive

financing in a highly competitive and evolving telecommunications marketplace.” *Part 1 Order* at ¶ 86. In contrast to the wireless telecommunications services, however, there is no evidence that such “flexibility” is necessary for small businesses to obtain the capital to construct start-up broadcast stations. As mentioned above, a start-up broadcast station does not have the capital requirements of start-ups in the wireless telecommunications industry. Furthermore, such a “flexible” standard is likely to invite sham structures like those that plagued the broadcast comparative process during the last decade. DanBeth submits that if an applicant is able to attract such “passive financing,” it has no need for a small business or diversification credit.

DanBeth therefore strongly urges the Commission to adopt affiliation rules that attribute the revenues and media interests of any person holding a 5 percent or greater interest in the applicant, calculated on a fully diluted basis. DanBeth believes that as a general principal, the revenues and media interests of any investor holding a 5 percent or greater interest should be attributed to the applicant. DanBeth would allow, however, one exception to this general principal. The revenues and media interests of a 5 percent or greater investor would not be attributed if (1) the investor owned no more than 49.9 percent on a fully diluted basis, and (2) a single individual or entity qualifying as a small business and having no other media interests (a) owned more than 50 percent of the applicant’s equity, on a fully diluted basis, and (b) had contributed at least 50 percent of the applicant’s capital. DanBeth suggests that the only way to assure that any exception for “passive

Respectfully submitted,

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